of the New York courts in *Goodale* v. *Brockner,* 25 Hun 621; *Norton* v. *Rhodes,* 18 Barb. 100. In California there is a statutory liability in such a case. *Watt* v. *Smith,* 89 Cal. 602, 26 Pac. Rep. 1071. In Nebraska such a statute placing a liability upon the husband for support of the wife while in a state asylum has been held unconstitutional as being a special tax. *Baldwin* v. *Douglas County,* 37 Neb. 283.

HUSBAND AND WIFE—WIFE'S EARNINGS.—Defendant's intestatee was a feeble woman, living in the upper story of the same house with plaintiff, who was accustomed to care for her and her rooms and to prepare her meals, carrying them up from her own room. At the time of the rendition of the services, plaintiff was a married woman, living with her husband. Action was brought, under the statute, making the earnings of a married woman her separate property and giving her an action therefor. (L. 1860, Ch. 90 § 2). *Held,* (three judges dissenting), (1) that there was no presumption under the statute that the earnings of the wife still belonged to the husband, (2) the fact that she did this work with the knowledge of the husband was sufficient evidence to show an election by the wife to pursue a separate calling. *Stevens* v. *Cunningham* (1905), 181 N. Y. 454, 74 N. E. Rep. 434.

These services were performed before the enactment of the later statute, (L. 1902, Ch. 289 § 30), expressly providing that the presumption shall be that the wife is alone entitled to her earnings. The Supreme Court (75 Hun 125, 74 N. Y. Supp. 364) held that there was a presumption that the earnings of the wife belonged to the husband as was evidenced by the enactment of the later statute. This would seem to be in line with the former holdings of the New York Courts. *Porter* v. *Dunn,* 131 N. Y. 314; *Birkbeck* v. *Ackroyd,* 74 N. Y. 356, 30 Am. Rep. 304; *Stamp* v. *Franklin,* 144 N. Y. 607; *Reynolds* v. *Robinson,* 64 N. Y. 589. This is also the holding in some of the other states. *Poffenberger* v. *Poffenberger,* 72 Md. 321; *McClusky* v. *Provident Inst. for Savings,* 103 Mass. 300; *Brittain* v. *Crowther,* 54 Fed. 295. But see *Brooks* v. *Schwerin,* 54 N. Y. 343; *Lewis' Estate—Rhodes' Appeal,* 156 Pa. St. 337, 27 Atl. Rep. 35.

INNKEEPER—LIABILITY TO GUESTS FOR INJURIES INFLICTED BY SERVANT.—Plaintiff, his wife, and his six year old son were guests in the defendant's hotel. The boy out of curiosity wandered into a room where two employees, off duty at the time, were amusing themselves. One of these in jest threatened him with a pistol, an accidental discharge of which destroyed the boy's sight in one eye and otherwise injured him. In this action for damages for the injury, *Held,* that the defendant is liable. *Clancy* v. *Barker et al.* (1905), — Neb. —, 103 N. W. Rep. 446.

On the first hearing of this case (98 N. W. Rep. 440) the court unanimously held the defendant accountable, but on this rehearing BARNES J., dissents. He was confessedly influenced by a decision pronounced upon the same facts in a Federal court between the hearing and rehearing. *Clancy* v. *Barker* (1904), 131 Fed. Rep. 161, which was an action for the injured boy by the present plaintiff as his next friend. The Federal court had repudiated the first Nebraska decision as no law, and deprecated it as

retroactive adjudication impairing and changing a completed contract. The case is unique. An innkeeper is liable for personal injury to the guest only when the injury results from the innkeeper's negligence. He does not insure his guest's safety. So all the cases say from *Calve's Case,* 8 Co. 33b, to *Rahmel* v. *Lehndorff* (1904), 142 Cal. 681, 76 Pac. 659, 65 L. R. A. 88, 100 Am. St. R. 154. Not one is to be found making the innkeeper an insurer of his guest's safety. Those cited by the Court to strengthen its position and to indicate an alleged modern trend toward insurance of the guest's safety, are nevertheless wholly within the well-acknowledged doctrine that the innkeeper is bound to use only reasonable care to keep his guest free from discomfort and harm. Negligence in them all was proved against the innkeeper. Here, however, the court held the defendant liable without inquiring after possible negligence, and solely on the ground that the defendant was an innkeeper with liabilities like a common carrier's in this regard, and that the injured boy was his guest. The reasons for the strict care demanded of the common carrier—the utter surrender of the passenger's freedom, the high risk attendant on the sort and speed of vehicle, the devotion of the time wholly to the carrier's business—do not exist in the relation of innkeeper and guest. Obviously the decision is beyond the law. The dissenting judge protested, "While my associates state that they do not intend to make the innkeper an insurer of the safety of the guest, it seems clear to me that such is the effect of the prevailing opinion." The defendant's liability according to the well-established rule was certainly dependent upon whether he was negligent in employing the servant who worked the injury. *Rahmel* v. *Lehndorff,* supra.

LANDLORD AND TENANT—APARTMENT HOUSE—DANGEROUS PREMISES—INJURY TO CHILD—LIABILITY OF LANDLORD.—The owner of a city apartment house rented the flats therein to tenants for housekeeping purposes. The children of the occupants had been allowed for several years to play on the porches without reference to the relative occupancy of the adjoining apartments by their parents. Around these porches was a rail balustrade which had become defective. A young child, the daughter of one of the tenants, while on a visit to the flat having the defective porch, in playing with a companion ran against the same, was precipitated to the ground, and injured. In an action against the landlord, it was *Held,* that the plaintiff could recover. *Widing* v. *Penn Mut. Life Ins. Co.* (1905), — Minn. —, 104 N. W. Rep. 239.

It was urged as a defence that the child was a trespasser, or at most a mere licensee, and as such, in duty bound to take the premises as she found them, and that the owner was not bound to go beyond the obligations arising from actual or implied duties, to provide a reasonably safe place for trespassers or licensees. The court decided, however, that the child was not a trespasser or in a legal sense a licensee, and that it was the owner's duty to exercise ordinary care to maintain the railings around the porches where the children were permitted to play, in a reasonably safe condition for use. This case is noteworthy in that it practically decides that it is the landlord's duty as to every inmate to keep in repair the whole of an